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IN THE

Supreme Court of the United States

INTERNATIONAL INDEMNITY COMPANY, Applicant for Certiorari vs. JIMMY ENFINGER, by and through his next friend, JOHNNIE ENFINGER, Respondent	UNITED STATES SUPREME COURT DOCKET NO. _____ On Appeal from the Supreme Court of Georgia Case No. 41070
INTERNATIONAL INDEMNITY COMPANY, Applicant for Certiorari vs. TOMMY LEE ODOM, Respondent	Supreme Court of Georgia Case No. 41049

APPLICATION FOR WRIT OF CERTIORARI

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INTERNATIONAL INDEMNITY COMPANY, Applicant for Certiorari vs. TOMMY LEE ODOM, Respondent	:	Supreme Court of Georgia Case No. 41049

PETITION FOR WRIT OF CERTIORARI

Comes now International Indemnity Company, (IIC), Applicant for Certiorari in the above-styled companion cases, and submits this Application for Writ of Certiorari:

This single petition for Writ of Certiorari is submitted for the reason that the differences in the above-referenced cases are unsubstantial. **Armour Packing Co. v. United States,** 209 U.S. 56, 28 S. Ct. 428, 52 L.Ed. 681 (1908)

(A) Questions presented for review.

1. Does the Georgia Supreme Court's decision in **Enfinger v. International Indemnity Co.,** 253 Ga. 185, 317 S.E. 2d

816 (1984) (Enfinger) and applied in **Odom v. International Indemnity Co.**, 253 Ga. 210, 317 S.E. 2d 833 (1984) (Odom), deprive insurers, including applicant, issuing automobile liability policies containing "no-fault" coverages of the equal protection of laws guaranteed by the Constitution of the United States by discriminating against insurers issuing those policies of insurance after the inception of the Georgia Motor Vehicle Accident Reparations ("No Fault") Act, in making mandatory and as the only way to offer optional "no-fault" benefits, the securing of a multiple signature application with a separate signature space for choices as to optional coverages, while allowing for insurers who issued policies before, and/or existing on the date of the no fault act, to offer the coverages by mail without the need to assure receipt by the insured or a written response pursuant to O.C.G.A. 33-34-5 (c) (Michie 1982), prior to its amendment in 1982?

2. Was O.C.G.A. 33-34-5 (c), prior to its amendment in 1982 (Ga. L 1982, p. 1234), unconstitutionally vague and violative of insurer's due process rights as a matter of law?

3. By ruling that O.C.G.A. 33-34-5 (c) is not applicable to insurance contracts issued after the inception of the Georgia Motor Vehicle Accident Reparations Act (March 1, 1975) as a curative mechanism, did the Georgia Supreme Court create a conclusive presumption of noncompliance with the requirements of that code section to offer optional benefits that, therefore, deprives no-fault insurers, including applicant, of property without due process of law?

4. By ruling that **Enfinger** is retroactively applicable to **Odom** and other pending cases, did the Georgia Supreme Court deprive applicant and other similarly situated insurers of property without due process of law, where, based upon the gloss placed on O.C.G.A. 33-34-5 (c) by previous appellate decisions, applicant and other similarly situated insurers reasonably believed it had validly complied with the offer requirements of the No Fault Act?

5. Do the penalty and punitive damages provisions of O.C.G.A. 33-34-6 violate, as a matter of law, insurers' constitutional rights to due process and equal protection?

(B) Parties to the Proceedings.

Parties to the proceedings in the Court whose judgement is sought to be reviewed are as follows:

Jimmy Enfinger

Johnnie Enfinger as next friend of Jimmy Enfinger

Tommy Lee Odom

International Indemnity Company (both cases)

(C) Table of Contents and Table of Authorities

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(C) This case comes to this Court on Application for Writ of Certiorari from the Georgia Supreme Court in the cases styled **Jimmy Enfinger by and through his next friend Johnnie Enfinger vs. International Indemnity Company,** 253 Ga. 185, 317 S.E. 2d 816 (1984), decided June 29, 1984, rehearing denied July 25, 1984 and **Tommy Lee Odom vs. International Indemnity Company,** 253 Ga. 210, 317 S.E. 2d 833 (1984), decided July 6, 1984, rehearing denied July 30, 1984.

(D) **Jurisdiction.** The Judgements or decrees sought to be reviewed were rendered by the Georgia Supreme Court on June 29, 1984 and July 6, 1984, with applicant's motions for rehearing denied on July 25, 1984 and July 30, 1984 respectively. The present application is brought within the time allowed by 28 U.S. 2101.

The Georgia Supreme Court has granted as Stay of the Remittitur in the above-referenced cases up to and including September 27, 1984 to allow application for a Writ of Certiorari to this Court.

There is no cross petition for a Writ of Certiorari.

Jurisdiction is conferred upon this Court by the 28 U.S.C. Sec. 1257 (3) which allows review by this Court by Writ of Certiorari where the validity of a state statute is drawn into question on the ground of its being repugnant to the Consitution, treaties or laws of the states, or where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised, under the United States.

(E) This case involves the challenge by applicant, a Georgia Insurance Corporation, to the Constitutionality of O.C.G.A. 33-34-5, particularly subsection (c). A copy of O.C.G.A. 33-34-5, as amended by Ga. L. 1975, p. 4, is attached as Exhibit 1 to the Appendix.

As originally enacted, Section 33-34-5 (referred to as former Section 56-3404b prior to the recodification of Georgia's statutory laws in 1982) did not contain subsections (c) and (d)

and would have automatically engrafted the maximum $50,000.00 in no fault bodily injury benefits (PIP) onto all policies of insurance existing on March 1, 1975 when the Act went into effect.

By amendment in 1982, Georgia Laws 1982, p. 1234, that statute deleted subsections (b), (c) and (d) and new language was inserted to change the presumption and signature requirement - that there had been an offer of the additional coverage where the application contains certain language in bold face type. A copy of the statute as amended is attached as Exhibit 2 to the Appendix.

(F) **Statement of the Case**. On March 1, 1975 the Georgia Motor Vehicle Accident Reparations Act (commonly known as the Georgia No-Fault Act), O.C.G.A. 33-34-1 et. seq., went into effect. Among other things, the Act makes mandatory the purchase and maintenance of a set amount of public liability coverage along with a minimum of $5,000.00 in personal injury protection coverage (PIP). Additionally, each insured must be offered, at the time of application, optional coverages up to $50,000.00 in PIP benefits and property damage coverages.

International Indemnity Company (IIC) was formed in 1977 to conduct insurance business in the State of Georgia, and engages in the sale and issuance of motor vehicle liability policies containing, among other coverages, PIP coverages issued in compliance with the Georgia Motor Vehicle Accident Reparations Act. After its creation in 1977, IIC issued a policy of liability insurance containing no-fault coverages to respondents (Mr. Enfinger's policy was issued on August 26, 1980 and Mr. Odom's was issued on August 5, 1977) and others similarly situated, containing $5,000.00 in no-fault benefits, based on an application submitted by or on behalf of each insured. That application, which contained only one signature as to all coverages offered, has been declared to be in noncompliance with O.C.G.A. 33-34-5 (b) in that the Courts of the State of Georgia have construed that code section to require a separate signature space to apply to responses to offerings of optional no-fault coverages, and a separate signature space to apply to all other

coverages. Applications containing fewer than the required signature spaces result in the imposition of $50,000.00 in PIP coverage from the inception of the policy of insurance, as decided by the Georgia Supreme Court in **Flewellen v. Atlanta Cas. Co.**, 250 Ga. 709, 300 S.E. 2nd 673 (1983). (Flewellen).

As a matter of business policy, IIC, shortly after issuance of each policy of insurance, sent a written offer of optional personal injury protection coverages as well as property damage coverages to its insureds to solicit the sale of additional amounts of coverage pursuant to O.C.G.A. 33-34-5 (c). That conduct was based upon business considerations as well as decisions from the Georgia Court of Appeals and Supreme Court authority, as well as decisions from the United States District Courts of the State of Georgia, which created the reasonable expectation that the solicitation letter offers of optional no-fault insurance, sent after issuance of the policies, would act as a mechanism to provide the necessary offer as required by the No-Fault Act, curing any deficiency in the application forms used by IIC.

In 1980, a Georgia Court of Appeals decision, **Jones v. State Farm Mut. Auto. Ins. Co.** 156 Ga. App. 230, 274 S.E. 2nd 623 (1980) (Jones) ruled that if a policy of insurance containing no-fault benefits was issued on an application containing less than the requisite number of signature spaces, a continuing offer was created so that, post injury, an insured could "reform" his policy of insurance up to the maximum PIP benefits. That application defect could be cured, according to the **Jones** Court, by a mailed offer sent pursuant to O.C.G.A. 33-34-5 (c) (former Ga. **Code Ann.** Sec. 56-3404b [c]). **Jones** was overruled by **Flewellen v. Atlanta Cas. Co.**, 164 Ga. App. 885, 300 S.E. 2d 166 (1982), which was reversed by the Georgia Supreme Court. **Id.**, 250 Ga. 709, 300 S.E. 2d 673 (1983). **Flewellen**, decided some three years after **Jones**, modified the continuing offer theory to impose the $50,000.00 in coverage on each policy of insurance issued on a deficient application, subject to activation by payment of additional premium and submission of additional proof of loss.

The **Jones** and **Flewellen** decisions generated a multitude of law suits for optional PIP, post injury. Under the Georgia Motor Vehicle Accident Reparations Act, failure to make payment within 30 days without a reasonable basis (the burden being on the insurer to show a good faith refusal to pay) subjects the insurer to 25% bad faith penalty and attorney's fees, and the failure to pay within 60 days subjects the insured to unlimited punitive damages. O.C.G.A. 33-34-6.

Applicant did not honor the claims in excess of the minimum $5,000.00 based upon its reliance on O.C.G.A. 33-34-5 (c), applying that subsection to policies of insurance issued after March 1, 1975 as a corrective mechanism for those policies of insurance issued on deficient applications, based on such authority as **Jones v. State Farm Mut. Auto. Ins. Co.**, 156 Ga. App. 230, supra; (1980); **State Farm Mut. Auto. Ins. Co. v. Bates**, 542 F. Supp. 807 (N.D. Ga. 1982); **Shave v. Allstate Ins. Co.**, 549 F. Supp. 1006 (S.D. Ga. 1982); **Nalley v. Select Ins. Co.**, 165 Ga. App. 345, Writ withdrawn 251 Ga. 721, 310 S.E. 2d 918 (1983). Compare **Flewellen v. Atlanta Cas. Co.**, 250 Ga. 709, 714 supra.

On February 28, 1984, the Georgia Court of Appeals approved applicant's efforts pursuant to O.C.G.A. 33-34-5 (c), declaring that the subsection applied to all policies of insurance, including those issued after the inception of the no-fault act, and would operate as a corrective mechanism to rectify the infirmities of the application form used by the applicant. **International Indemnity Co. v. Enfinger**, 170 Ga. App. 443, 317 S.E. 2nd 841 (1984). Some three weeks later **Enfinger** was applied to Mr. Odom's policy, also reversing the judgement of the trial court and ruling in favor of the applicant. **International Indemnity Co. v. Odom**, 170 Ga. App. 447, 317 S.E. 2nd 844 (1984).

On June 29, 1984 the Georgia Supreme Court reversed the Court of Appeals in **Enfinger v. International Indemnity Co.**, 253 Ga. 185, 317 S.E. 2d 816 (1984) and ruled that O.C.G.A. 33-34-5 (c) does not apply to policies of insurance issued after March 1, 1975 and that, in any event, letters sent pursuant to

subsection (c) of that code section do not provide a corrective mechanism. The **Enfinger** Court made no ruling on the issue of good or bad faith of the petitioner in litigating that claim. Thereafter on July 6, 1984 the Georgia Supreme Court decided the case **Odom vs. International Indemnity Company,** 253 Ga. 210, 317 S.E. 2d 833 (1984) which applied the **Enfinger** decision retroactively. The **Odom** Court made no ruling on the good or bad faith of petitioner in litigating the claim or other similar claims.

Significantly, in **Enfinger,** the Georgia Supreme Court conceded that the interpretation given to the statute by Petitioner, the Georgia Court of Appeals and the United States District Court was one to which the statute was "susceptible," but the Supreme Court simply did not believe that the legislature intended to give that statute such broad application.

(G) Stage in proceedings where Federal Court questions sought to be reviewed were raised. Petitioner's Constitutional attack was raised in the Motions for Rehearing filed with the Georgia Supreme Court. This Court has ruled that raising the issue of the constitutionality of a state statute in a Motion for Rehearing before the Georgia Supreme Court is sufficient to invoke this Court's appellate jurisdiction., where the Georgia Court rules on the issue. **Cox Broadcasting Corporation v. Cohn,** 420 U.S. 469, 476, 95 S. Ct. 1029, 43 L.Ed. 2nd 328 (1975). Moreover, this case falls within the exception to the general rule-that attempting to raise a federal question after judgement, upon a petition for rehearing, comes too late unless the court actually entertains the question and decides it. In this case the question respecting the validity of the statute concerns its application by the Georgia Supreme Court which first arose from the unanticipated ruling in **Enfinger** and **Odom** giving to the statute a new construction which threatens rights under the constitution. **Missouri v. Gehner,** 281 U.S. 313, 50 S.Ct. 326, 74 L. Ed. 870 (1930); **Brinkerhoff-Faris Trust & Savings Co. v. Hill,** 281 U.S. 673, 677-678, 50 S.Ct. 451, 74 L.Ed. 1107 (1930).

(H) As shown previously under the **statement of the case**, the ruling of the Georgia Supreme Court in the above-referenced cases could not have been anticipated due to the body of law construing subsection (c) of O.C.G.A. 33-34-5, upon which the petitioner had relied, and which decisions the Georgia Supreme Court earlier had the opportunity to review and reverse but chose not to do so. Under Georgia Law the interpretation given to a statute by the State's appellate courts becomes a part of the statute, upon which the citizens of the State are entitled to rely as though enacted by the General Assembly. **Williams v. Ray,** 146 Ga. App. 333, 246 S.E. 2d 387 (1978). By its rulings in **Enfinger** and **Odom** the Georgia Supreme Court gave a new and unexpected interpretation to O.C.G.A. 33-34-5 (c), or at least reversed its prior interpretation (which arose by tacit approval of the Court of Appeal's interpretation or refusing to review and reverse same). Cf **Pruneyard Shopping Center v. Robins,** 447 U.S. 74, 85, n9, 100 S. Ct. 2035, 64 L.Ed. 2d 741 (1980).

(I) Direct and concise argument amplifying the reasons relied on for allowance of writ.

This is the case of special and important questions concerning federal law and importance to the public.

The rights of insurance corporations, like any other citizen, are protected by the United States Constitution and are entitled to equal protection and due process under the 14th amendment. **The Home Ins. Co. of New York v. Morse,** 20 Wall (U.S.) 445 (1874); accord, **Safeguard Mut. Ins. Co. v. Miller,** 472 F. 2nd 732 (3rd Cir. 1973).

The Petitioner's application is based upon its firm belief that certain portions of the Georgia Motor Vehicle Accident Reparations Act, particularly O.C.G.A. 33-34-5 (c), are violative of the 5th and 14th amendments to the United States Constitution and are, therefore, unconstitutional.

First, O.C.G.A. 33-34-5 (c), prior to its amendment by Georgia laws 1982, p. 1234, was unconstitutionally vague in that the statute, prior to its definitive interpretation by the Georgia Supreme Court in **Enfinger v. International Indemnity Co.** did

not give fair notice of such requirements and reasonable men were incapable of ascertaining its true meaning. The statute's requirement for plural signatures on no fault applications was vague. (see **Cotton States Mut. Ins. Co. v. McFather**, 251 Ga. 739, 743, 309 S.E. 2d. 799 [1983]), but the statute's provision for "automatic" maximum PIP coverage, absent plural signatures was also virtually imperceptible. Moreover, the Georgia Courts had ruled that a mailed offer, sent after issuance of a policy on a deficient application, would supply the required offer, even though no signature from the insured was necessary, and the mere passage of time without a response constituted a rejection. **Jones v. State Farm, etc.**, 156 Ga. App. at 233 (policies issued in 1977); **State Farm, etc. v. Bates**, 542 F. Supp. 807, supra; **Shave v. Allstate Ins. Co.**, 549 F. Supp. at 1012 (subsection c is a corrective mechanism for all policies, not just those issued before March 1, 1975); **Nalley v. Select Ins. Co.**, 165 Ga. App. 345, supra (applying subsection c to a policy issued in November, 1975 and renewed August 23, 1977); s.c. writ dismissed 251 Ga. at 722, note 1, supra: Court of Appeals' decision is one "possible" construction). Cf **Flewellen v. Atlanta Cas. Co.**, 250 Ga. at 714, supra (O.C.G.A. 33-34-5 [b] provision, that $50,000.00 maximum coverage is imposed where a policy application contains fewer than two signatures, is not an unforeseen penalty: "see also O.C.G.A. 33-34-5 [c] ...."). Any contrary indication, prior to **Enfinger** and **Odom**, was obiter dictum. See **Wiard v. Phoenix Ins. Co.**, 251 Ga. 698, 310 S.E. 2d 221 (1983); **Stafford v. Allstate Ins. Co.**, 252 Ga. 38, 311 S.E. 2d 437 (1984) (policies in both cases were issued before March 1, 1975 and the issues concerned the sufficiency of the proof of mailing and the contents of the offer.)

Hence, Petitioner was given no reasonable opportunity to know what conduct was prohibited - and a fortiori what was required. As in **United States v. L. Cohen Grocery Co.**, 255 U.S. 81, 41 S. Ct. 298, 65 L.Ed. 516 (1921), the vagueness of the statute, as well as its constitutional infirmity, is demonstrated by the "conflicting results which have arisen from the painstaking attempts of enlightened judges in seeking to carry

out the statute in cases brought before them...." **Id.**, 255 U.S. at 89-90. This standard applies also in civil cases. **A.B. Small Co. v. American Sugar Refining Co.**, 267 U.S. 233, 45 S. Ct. 295, 69 L.Ed. 589 (1925); compare **International Indemnity Co. v. Woods**, 169 Ga. App. 830, 315 S.E. 2d 20 (1984); **First of Georgia Underwriters Co. v. Beck**, 170 Ga. App. 68, 316 S.E. 2d 59 (1984) (regardless of the efficacy of subsection [c] to cure a defective application, an insured suffering an injury within the thirty day period following the mailed offer has the maximum coverage vested as of the date of the injury); with **International Indemnity Co. v. Lott**, 170 Ga. App. 728, S.E. 2d (1984) (where another panel of the Court of Appeals ruled directly opposite to **Woods** and **Beck** - the failure to respond within 30 days of the mailed offer constitutes a rejection).

Petitioner's right to procedural due process is also infringed upon by the fact that the statute, according to **Enfinger** and **Odom**, creates an irrebuttable presumption that an applicant is not offered optional PIP unless plural signatures appear on an application. Other evidence cannot be introduced regarding the intent of the parties. **Colwell v. Voyager Cas. Co.**, 251 Ga. 744 (2), 309 S.E. 2d 617 (1983); **Tolison v. Farm Bureau Mut. Ins. Co.**, 253 Ga. 97, 101, 317 S.E. 2d 185 (1984). Section 33-34-5 (c), as interpreted in **Enfinger** and **Odom**, violates Petitioner's substantive due process rights because the consequence of failing to obtain more than one signature is unfair and bears no reasonable or rational relationship to the legislative goal of the No Fault Act. See also O.C.G.A. 33-34-5 as amended by Ga. L. 1982, p. 1234 (applications with bold face type now carry a sufficient offer).

The Georgia Supreme Court's decision to apply its **Enfinger** interpretation of O.C.G.A. 33-34-5 (c) retroactively, despite the insurance industry's obvious and understandable inability to decipher correctly the meaning of subsection (c) prior to **Enfinger** and **Odom**, particularly based upon the gloss placed on that statute by previous decisions of the Georgia Court of Appeals, the Georgia Supreme Court and The United States District Courts, grossly offends the guaranty of due process un-

der the United States Constitution. United States Constitution amendments V and XIV. Given the penal nature of the No Fault Act and the great difficulty exhibited by numerous trial and appellate judges in understanding the meaning of subsection (c), subjecting the insurance company to millions of dollars in losses for its failure to guess correctly as to the meaning of subsection (c) is patently unfair.

Second, the penalties and punitive damages provisions of the No Fault Act contravenes the insurance company's right to due process and equal protection under the United States Constitution. The United States Constitution Amendments V and XIV. O.C.G.A. 33-34-6 (b) provides for double penalties for the same conduct (i.e., nonpayment of a no-fault claim within 30 or 60 days of appropriate documentation) as well as providing for punitive damages in contract cases, all of which is contrary to the Georgia law applied both in noninsurance cases and in all other types of insurance cases. In seeking to avoid the imposition of these erroneous double penalties and punitives, insurance companies must carry the burden of proof in establishing their good faith and refusing to pay claims within the statutory time periods. In all other instances respecting an allegation of bad faith, the party claiming that his opponent acted in bad faith must carry the burden of proof. No fault insurers, including petitioner, therefore, have been subjected to an unconstitutional double standard respecting penalties suffered for refusing to pay claims and a statutorily timely manner, and their consequent loss of property is without any rational foundation and violates due process as well.

(J) Appendix:

Exhibit 1 O.C.G.A. 33-34-5, as amended by Ga. L. 1975, p. 4.

Exhibit 2 O.C.G.A. 33-34-5, as amended by Ga. L. 1982, p. 1234.

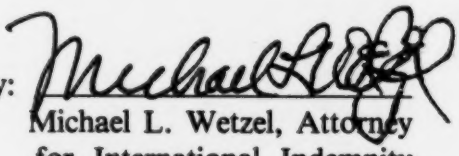
Exhibit 3 **International Indemnity Co. v. Enfinger,** 170 Ga. App. 443, 317 S.E. 2d. 841 (1984).

Exhibit 4 **Enfinger v. International Indemnity Co.,** 253 Ga. 185, 317 S.E. 2d 816 (1984).

Exhibit 5 **Odom v. International Indemnity Co.**, 170 Ga. App. 44, 317 S.E. 2d 844 (1984).

Exhibit 6 **Odom v. International Indemnity Co.**, 253 Ga. 210, 317 S.E. 2d 833.

Respectfully submitted,
GURLEY & FOWLER, P.C.

By: 
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AFFIDAVIT OF SERVICE

Comes now Michael L. Wetzel, who, after being duly sworn, deposes and states:

I have this day served Robert P. Wildau, Esq., attorney for Tommy Lee Odom and Ben Kirbo, Esq., attorney for Johnnie Enfinger as next friend of Jimmy Enfinger with a copy of this Petition for Writ of Certiorari by depositing same in the United States Mail in an envelope addressed with adequate postage to:

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Ben Kirbo, Esq.
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This 21 day of September, 1984.

Michael L. Wetzel
Attorney for International
Indemnity Company

Sworn to and subscribed to before me this 21 day of September, 1984.

John B. Mangrum
Notary Public
Commission expires 9-6-88

TABLE OF AUTHORITIES

CONSTITUTIONS AND STATUTES

Amendments V and XIV, United States Constitution

Official Code of Georgia Annotated (O.C.G.A.), Sections 33-34-5 and 33-34-6. (Michie 1982)

Case Authority

Brinkerhoff - Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 S. Ct. 451, 74 L.Ed. 1107 (1930).

Colwell v. Voyager Casualty Co., 251 Ga. 744, 309 S.E. 2d 617 (1984).

Cotton States Mutual Insurance Co. v. McFather, 251 Ga. 739, 309 S.E. 2d 799 (1983).

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 95 S. Ct. 1029, 43 L.Ed. 2d 328 (1975).

Enfinger v. International Indemnity Co., 253 Ga. 185, 317 S.E. 2d 816 (1984).

Flewellen v. Atlanta Casualty Company, 250 Ga. 709, 300 S.E. 2d 673 (1983).

Flewellen v. Atlanta Casualty Company, 164 Ga. App. 885, 300 S.E. 2d 166 (1982).

First of Georgia Underwriters Company v. Beck, 170 Ga. App. 68, 316 S.E. 2d 519 (1984).

International Indemnity Co. v. Enfinger, 170 Ga. App. 443, 317 S.E. 2d 841 (1984).

International Indemnity Co. v. Lott, 170 Ga. App. 728, S.E. 2d (1984).

International Indemnity Co. v. Odom, 170 Ga. App. 447, 317 S.E. 2d 844 (1984).

International Indemnity Co. v. Woods, 169 Ga. App. 830, 315 S.E. 23 20 (1984).

Jones v. State Farm Mutual Automobile Liability Ins. Co., 156 Ga. App. 230, 274 S.E. 2d 623, writ dismissed 248 Ga. 46, 280 S.E. 2d 837 (1980).

Jones v. Swett, 244 Ga. 715, 261 S.E. 2d 610 (1979).

Missouri v. Gehner, 281 U.S. 313, 50 S. Ct. 326, 74 L.Ed. 2d 870 (1930).

Nalley v. Select Insurance Company, 165 Ga. App. 345, 299 S.E. 2d 172, writ withdrawn 251 Ga. 721, 310 S.E. 2d 918 (1983).

Odom v. International Indemnity Co., 253 Ga. 210, 317 S.E. 2d 833 (1984).

Pruneyard Shopping Center v. Robins, 447 U.S. 74, 100 S. Ct. 2035, 64 L.Ed. 2d 741 (1980).

Safeguard Mutual Insurance Co. v. Miller, 472 F2d 732 (3rd Cir. 1973).

Shave v. Allstate Insurance Co., 549 F. Supp. 1006 (S.D. Ga. 1982).

Small v. American Sugar Refining Co., 267 U.S. 233, 45 S. Ct. 295, 69 L.Ed. 589 (1925).

Stafford v. Allstate Insurance Co., 252 Ga. 38, 311 S.E. 2d 437 (1984).

State Farm Mutual Automobile Ins. Co. v. Bates, 542 F. Supp. 807 (N.D. Ga. 1982).

The Home Insurance Company of New York v. Morse, 20 Wall (U.S.) 445 (1874).

Tolison v. Georgia Farm Bureau Mutual Insurance Co., 253 Ga. 97, 316 S.E. 2d 466 (1984).

United States v. L. Cohen Grocery Co., 255 U.S. 81, 41 S. Ct. 298, 65 L.Ed. 516 (1921).

Wiard v. Phoenix Insurance Co., 251 Ga. 698, 310 S.E. 2d 221 (1983).

Williams v. Ray, 146 Ga. App. 333, 246 S.E. 2d 387 (1978).

APPENDIX

EXHIBIT 1

33-34-5. Optional coverages.

(a) Each insurer shall also make available on an optional basis the following coverage:

(1) An aggregate limit of benefits payable without regard to fault up to $50,000.00 per person, which may be rejected or reduced to not less than an aggregate limit of benefits payable without regard to fault of $5,000.00 per person by written consent of the policyholder. Benefits purchased in excess of $5,000.00 shall be paid as determined by the insured without apportionment to cover any of the following expenses incurred by the insured but not compensated for under paragraph (2) of subsection (a) of Code Section 33-34-4:

(A) Any expenses of the type described in subparagraph (a)(2)(A) of Code Section 33-34-4;

(B) Eighty-five percent of the loss of income or earnings during disability;

(C) Expenses of the type described in subparagraph (a)(2)(C) of Code Section 33-34-4, not to exceed $20.00 per day; and

(D) Funeral services and burial expenses not to exceed $2,000.00 per person;

(2) In the event of the death of the injured person who is survived by a spouse or dependent child or children, compensation under subparagraphs (a)(2)(B) and (a)(2)(C) of Code Section 33-34-4 shall be payable after the death as though the deceased were alive but totally disabled, the payment to be made to the spouse, if alive, and otherwise to the child or children or the person having legal custody of any child or children for use of the spouse or children as though awarded as a year's support for the spouse or children, or both. Survivor's benefits shall be payable at least monthly until exhausted;

(3) Compensation without regard to fault for damage to the insured motor vehicle not to exceed the actual cash value of the vehicle at the time of the loss, including up to $10.00 per day with a maximum of $300.00 for the loss of use of the motor vehicle, provided that benefits payable under this paragraph may be subject to deductibles at the written election of the policyholder.

(b) Each application for a policy of motor vehicle liability insurance sold in this state must contain separate spaces for the insured to indicate his acceptance or rejection of each of the optional coverages listed in subsection (a) of this Code section and no policy shall be issued in this state unless these spaces are completed and signed by the prospective insured.

(c) On and after March 1, 1975, all named insureds in existing motor vehicle liability policies who have not previously responded to an offer to accept or reject the optional coverages required to be offered by this chapter shall be given an opportunity to accept or reject, in writing, the optional coverages required to be offered under this Code section; provided, however, that the failure of an insured to notify his insurer of his written acceptance or rejection within 30 days after written notice of the offer has been mailed by the insurer, postage prepaid, by first class mail to the address stated in the policy shall constitute a rejection of the optional coverage.

(d) The optional coverage required to be offered under this Code section need not be offered upon the renewal of any policy where the offer has been previously made by the same insurer and has been rejected in accordance with this Code section unless the named insured requests that coverage in writing. (Ga. L. 1974, p. 113, § 4; Ga. L. 1975, p. 3, §1; Ga. L. 1975, p. 1202, §4.)

EXHIBIT 2

33-34-5. Optional coverages

(a) Each insurer shall also make available on an optional basis the following coverage:

(1) An aggregate limit of benefits payable without regard to fault up to $50,000.00 per person. Benefits purchased in excess of $5,000.00 shall be paid as determined by the insured without apportionment to cover any of the following expenses incurred by the insured but not compensated for under paragraph (2) of subsection (a) of Code Section 33-34-4:

(A) Any expenses of the type described in subparagraph (a)(2)(A) of Code Section 33-34-4;

(B) Eighty-five percent of the loss of income or earnings during disability;

(C) Expenses of the type described in subparagraph (a)(2)(C) of Code Section 33-34-4, not to exceed $20.00 per day; and

(D) Funeral services and burial expenses not to exceed $2,000.00 per person;

(2) In the event of the death of the injured person who is survived by a spouse or dependent child or children, compensation under subparagraphs (a)(2)(B) and (a)(2)(C) of Code Section 33-34-4 shall be payable after the death as though the deceased were alive but totally disabled, the payment to be made to the spouse, if alive, and otherwise to the child or children or the person having legal custody of any child or children for use of the spouse or children as though awarded as a year's support for the spouse or children, or both. Survivor's benefits shall be payable at least monthly until exhausted;

(3) Compensation without regard to fault for damage to the insured motor vehicle not to exceed the actual cash value of the vehicle at the time of the loss, including up to $10.00 per day with a maximum of $300.00 for the loss of use of the

motor vehicle, provided that benefits payable under this paragraph may be subject to deductibles at the request of the policyholder.

(b) Each initial application for a new policy of motor vehicle liability insurance sold in this state after November 1, 1982, shall contain a statement in boldface type signed by the applicant indicating that the optional coverages listed in subsection (a) of this Code section have been explained to the applicant.

(c) All named insureds in motor vehicle liability policies in effect on November 1, 1982, shall be deemed to have signed the statement required by subsection (b) of this Code section.

(d) The provisions of subsection (b) of this Code section requiring explanation of the optional coverages shall not apply upon the renewal, replacement, reinstatement, transfer, or substitute of any policy or the addition or substitution of a motor vehicle covered by such policy. (Ga. L. 1974, p. 113, §4; Ga. L. 1975, p. 3, §1; Ga. L. 1975, p. 1202, §4; Ga. L. 1982, p. 1234, §1; Ga. L. 1983, p. 3, §24.)

EXHIBIT 3

66925, 66926. INTERNATIONAL INDEMNITY COMPANY v. ENFINGER; and vice versa.

QUILLIAN, Presiding Judge.

This case involves the construction of the following provision of the no-fault automobile liability insurance statute: "On and after March 1, 1975, all named insureds in existing motor vehicle liability policies who have not previously responded to an offer to accept or reject the optional coverages required to be offered by this chapter shall be given an opportunity to accept or reject, in writing, the optional coverages required to be offered under this Code section; provided, however, that the failure of an insured to notify his insurer of his written acceptance or rejection within 30 days after written notice of the offer has been mailed by the insurer, postage prepaid, by first class mail to the address stated in the policy shall constitute a rejection of the optional coverage." OCGA §33-34-5 (c) (Code Ann. §56-3404b (c)).

On August 26, 1980, appellant International Indemnity Company (IIC) issued an automobile liability insurance policy to cross-appellant Enfinger. Understanding the policy to provide only for $5,000 personal injury protection (PIP) benefits, on September 22, 1980, IIC sent Enfinger a letter following the requirements of the above statute, by first class mail and postage prepaid, advising him of optional PIP coverage and the additional premiums necessary for such coverage. By containing blocks to be checked, this letter conformed to the standard for such letters set down in *Wiard v. Phoenix Ins. Co.*, 251 Ga. 698, 700 (310 SE2d 221). IIC received no response to the letter from Enfinger. On October 30, 1980, Enfinger was injured in an automobile accident, and IIC paid him $5,000 PIP benefits under the policy.

On May 11 and 20, 1982, Enfinger, through his wife, requested payment of $45,000 additional PIP benefits from IIC and tendered the additional premium therefor. IIC denied the additional coverage and Enfinger commenced this action seeking the ad-

ditional PIP benefits, and penalties and attorney fees based on IIC's alleged bad faith refusal to pay the claim.

Following a pretrial hearing, the trial court held that the insurance policy issued to Enfinger provided for $50,000 PIP benefits from its inception because the application form therefor did not contain the signature spaces for the applicant to accept or reject optional coverage as required by OCGA §33-34-5 (a), (b) (Code Ann. §56-3404b (a), (b)); that IIC's letter of September 22, 1980, was ineffectual to constitute a rejection of the $50,000 PIP coverage; and that Enfinger was not entitled to attorney fees and penalties because as a matter of law there had been no bad faith refusal to pay the claim. We granted IIC's interlocutory appeal from the ruling that its notice of September 22, 1980 did not effect a rejection of optional coverage by Enfinger; and Enfinger cross-appeals from the ruling denying attorney fees and bad faith penalties. *Held:*

1. IIC now concedes that its policy application form did not comply with the signature requirements of OCGA §33-34-5 (b), supra, and therefore the insurance policy provided for $50,000 PIP benefits from its inception. This court has already examined IIC's application form and concluded such. *International Indem. Co. v. Reeves,* 165 Ga. App. 730 (302 SE2d 611).

2. IIC contends that even though its application form did not give Enfinger the opportunity to accept or reject the optional coverage because of its noncompliance with the statutory signature requirement, rejection of any optional PIP coverage was effected by Enfinger's failure to respond to its letter of September 22, 1980.

We agree as we find that Enfinger had an "existing motor vehicle liability" policy "after March 1, 1975" and had "not previously responded to an offer to accept or reject the optional coverages required to be offered." Accordingly, we reverse the contrary ruling of the trial court. *Nalley v. Select Ins. Co.,* 165 Ga. App. 345 (299 SE2d) 172).

3. In view of the foregoing finding, Enfinger's cross-appeal for attorney fees and penalties becomes moot.

Judgement reversed. Shulman, P.J., Birdsong, Carley and Sognier, JJ., concur. McMurray, C.J., Deen, P.J., Banke and Pope, JJ., dissent.

DECIDED FEBRUARY 28, 1984 –
Rehearing denied March 26, 1984 – CERT. APPLIED FOR.
Action on policy. Decatur Superior Court. Before Judge Cato.
Michael L. Wetzel, for appellant.
Ben Kirbo, for appellee.

DEEN, Presiding Judge, dissenting.

Almost without discussion, the majority opinion holds that OCGA §33-34-5 (c) may be used to "cure" noncompliance with the signature requirements of OCGA §33-34-5 (b). I find that conclusion untenable and, accordingly, must dissent from Division 2 of the majority opinion.

While OCGA §33-34-5 (c) (Code Ann. §56-3404b (c)) primarily, if not exclusively, addresses insurance policies in existence prior to the statute's enactment, the language of this subsection arguably does not exclude its application to all policies. Indeed, in *Jones v. State Farm Mut. Auto. Ins. Co.,* 156 Ga. App. 230, 233 (274 SE2d 623) (1980), this court suggested that "[i]f the application does not conform to the requirements of Code Ann. §3404 b (b), the insurer can meet its evidentiary burden by showing that it otherwise provided it no-fault insureds with 'an opportunity to accept or reject, in writing, the optional coverages required to be offered under [Code Ann. §56-3404b (a)' in compliance with the provisions of Code Ann. §56-3404b (c), and that the optional coverages were then effectively rejected." I note further that at least one federal court has characterized subsection (c) as such a "corrective mechanism." See Shave v. Allstate Ins. Co., 549 FSupp. 1006 (S.D. Ga. 1982).

However, the Supreme Court, in construing OCGA §33-34-5 (a), (b), has since decided that a policy of insurance issued after the effective date of the statute provides for $50,000 PIP benefits, *absent a signed rejection of the optional coverages by the insured. Flewellen v. Atlanta Cas. Co.,* 250 Ga. 709 (300 SE2d 673) (1983); *GEICO v. Mooney,* 250 Ga. 760 (300 SE2d 799) (1983). Application of subsection (c) to policies which were issued after the effective date of the statute would clearly result in the circumvention of the necessary, signed rejection of the optional coverages.

Subsequently, the Supreme Court has several times intimated through unequivocal dicta its approval of the limited application of OCGA §33-34-5 (c). In defining the sufficiency of a subsection (c) notice, the Supreme Court noted that the subsection was specifically enacted to address the question of optional coverages for policies in existence on the effective date, March 1, 1975. *Ward v. Phoenix Ins. Co.,* 251 Ga. 698 (310 SE2d 221) (1983), reversing *Wiard v. Phoenix Ins. Co.,* 166 Ga. App. 47 (303 SE2d 161) (1983). On December 5, 1983, the Supreme Court vacated its grant of certiorari to review this court's decision in *Nalley v. Select Ins. Co.,* 165 Ga. App. 345 (299 SE2d 172) (1983).[1] Two Justices concurred specially and three Justices dissented from that order of vacation. Chief Justice Hill, in his special concurrence which was joined by Justice Weltner, stated that *Nalley* was wrong in that it incorrectly applied subsection (c) to a policy that was issued after March 1, 1975. (The Chief Justice, however, concurred with the result in *Nalley,* finding that the supplemental application substantially complied with the subsection (b) requirements.) Justice Smith, in dissenting, also con-

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[1] In *Nalley,* this court held that subsection (c) applied where the motor vehicle liability policy was existing on August 23, 1977, at which time a supplemental insurance application was executed by the insured. Although the decision does not indicate whether the policy came into existence prior to or subsequent to March 1, 1975, and thus on its face does not stand for the proposition that subsection (c) applies to policies issued on or after March 1, 1975, review of the record in *Nalley* discloses that the policy actually was issued in November 1976. I believe that *Nalley* should be overruled.

cluded that subsection (c) did not apply to cases involving policies issued after March 1, 1975.

Even more recently, the Supreme Court has explained that "OCGA §33-34-5 (c) (Code Ann. §56-3404b) applies to policies in existence on March 1, 1975. OCGA §33-34-5 (b) (Code Ann. §56-3404b) applies to applications for policies beginning March 1, 1975. Each category of policies is governed by the respective requirements of the statute." *Stafford v. Allstate Ins. Co.*, 252 Ga. 38, 40 (311 SE2d 437). The majority, however, chooses to ignore this guiding dicta.

Nevertheless, reference to such Supreme Court dicta is unnecessary to realize the error in the majority's reading of OCGA § 33-34-5 (c). It is an established rule of construction that courts should not interpret a statute so as to render parts of it surplusage or meaningless. *State of Ga. v. C.S.B.*, 250 Ga. 261 (297 SE2d 260) (1982); *Undercofler v. Colonial Pipeline Co.*, 114 Ga. App. 739 (152 SE2d 768) (1966). The majority finds subsection (c) applicable to all policies, no matter when they were issued, only by reading the statute's limiting term of "[o]n and after March 1, 1975" as "on *or* after March 1, 1975" and failing to read the word "existing" in conjunction with the limiting term "[o]n and after..." The majority's construction obviously renders the above limiting terms meaningless or surplusage. The correct, most reasonable, plain and ordinary meaning of the term "[o]n and after March 1, 1975," read with the word "existing", is that subsection (c) applies only to policies which were already in existence on the effective date of the statute. Had the legislature intended otherwise, it need not have provided any limiting terms at all in the statute.

It appears that with the majority opinion, this court comes full circle with regard to subsection (b) signature requirements imposed upon applications for automobile liability insurance. Originally, no one questioned the sufficiency of but one signature. *Jones v. State Farm Mut. Auto. Ins. Co.*, supra, first required multiple signatures – separate signatures for each optional coverage. Subsequently, in *Flewellen v. Atlanta Cas. Co.*, supra, the

Supreme Court found two signatures, one for optional PIP coverage and one for optional property damage, to satisfy subsection (b). And now in the instant case, the majority in effect abolishes any signature requirement, i.e., written rejection or acceptance of optional coverage, where the insurer has sent out a subsection (c) notice thirty days before any claim is made. This holding simply eviscerates subsection (b) and the Supreme Court's holding in *Flewellen v. Atlanta Cas. Co.*, supra.

I do not suggest that it is impossible to cure a defective, post March 1, 1975, application (and policy) by some mechanism less than a complete, new application. Such a curative mechanism, however, should comply with the subsection (b) writing requirements as delineated in *Flewellen v. Atlanta Cas. Co.*, supra.

In summary, holding that OCGA §33-34-5 (c) may be utilized as a curative mechanism for defective policies issued after the effective date of the statute defies the standard rules of construction, ignores the apparent legislative intent behind the statute, as well as the Supreme Court's intimations on the application of the subsection, and results in the utter circumvention of the Supreme Court's decision in *Flewellen v. Atlanta Cas. Co.*, supra. For those reasons, I dissent.

I am authorized to state that Chief Judge McMurray, Judge Banke and Judge Pope join in this dissent.

EXHIBIT 4

67288. INTERNATIONAL INDEMNITY COMPANY v. ODOM.

McMurray, Chief Judge.

On August 5, 1977, the International Indemnity Company (IIC) issued an automobile insurance policy to Tommy Lee Odom. Understanding the policy to provide only for $5,000 personal injury protection (PIP) benefits, on January 18, 1978, IIC, through its general agent, sent Odom a letter (pursuant to and in compliance with OCGA §33-34-5 (c) (formerly Code Ann. §56-3404b (c) prior to its amendment by Ga. L. 1982, p. 1234, which amendment is not applicable here) by first class mail and postage prepaid, advising him of optional no-fault PIP and vehicle damage coverage and the additional premiums necessary for such coverage. The letter did not contain any space for the insured's signature, but instead provided blocks to be checked. See *Wiard v. Phoenix Ins. Co.*, 251 Ga. 698 (310 SE2d 221). The letter indicated that a lack of response within 30 days would be considered a rejection of all of the optional coverages. Odom did not respond to the letter and asserted that it was never received. See *Stafford v. Allstate Ins. Co.*, 252 Ga. 38 (311 SE2d 437). On March 3, 1978, Odom was injured in an automobile accident and subsequently was paid $5,000 by the insurer of the host vehicle.

On or about January 11, 1982, Odom, through this attorney, requested payment of $45,000 additional PIP benefits from IIC and thereafter, on February 11, 1982, tendered to IIC the premiums due for such additional coverage. IIC claimed that Odom was not entitled to these additional PIP benefits and filed suit for declaratory relief. Odom responded and counterclaimed, seeking the additional PIP benefits, and bad faith and attorney fees. Both parties filed motions for summary judgement. The trial court granted summary judgement in favor of Odom and denied IIC's motion. The trial court, in its order, held that the insurance policy issued to Odom provided for $50,000 PIP benefits from

its inception because the application form did not contain the signature spaces for the applicant to accept or reject optional coverage as required by OCGA §33-34-5 (a), (b) (formerly Code Ann. §56-3404b (a), (b)) prior to its amendment by Ga. L. 1982, p. 1234, which amendment is not applicable here. The trial court did not, however, address whether IIC's letter of January 18, 1978, was effectual to constitute a rejection of the optional PIP coverage, and it expressly reserved for later determination the right to rule on the issue of damages, including statutory penalties and attorney fees. It is from that order that IIC appeals. *Held:*

The case sub judice is controlled by the decision in this court's whole court case of *Int. Indemnity Co. v. Enfinger,* 170 Ga. App. 443 (–SE2d–) and consequently the judgement of the trial court must be reversed.

Judgement reversed. Shulman, P.J., and Birdsong, J., concur.

DECIDED MARCH 8, 1984 –
REHEARING DENIED MARCH 21, 1984.

Action on policy. Fulton Superior Court. Before Judge Fryer.
Michael L. Wetzel, for appellant.
Robert P. Wildau, for appellee.

EXHIBIT 5

41070. ENFINGER v. INTERNATIONAL INDEMNITY COMPANY.

Gregory, Justice.

We granted certiorari to review the Court of Appeals' decision in *Enfinger v. Intl. Indem. Co.*, 170 Ga. App. 443 (–SE2d–) (1984). The issue for our determination is whether OCGA §33-34-5 (c) may be utilized to "cure" noncompliance with the signature requirements of OCGA §33-34-5 (b). We answer this question in the negative and reverse.

On August 26, 1980, appellant Enfinger applied for automobile liability insurance with appellee International Indemnity Company (IIC). It is undisputed that the policy application form executed by Enfinger did not comply with the signature requirements of OCGA § 33-34-5 (b). The policy issued to Enfinger provided the minimum $5,000 personal injury protection (PIP) coverage. IN an attempt to remedy its defective policy application, on September 22, 1980, IIC sent Enfinger a letter following the requirements of OCGA §33-34-5 (c), by first class mail and postage prepaid, advising him of optional PIP coverage and the additional premiums necessary for such coverage. This letter conformed to the standards for such letters set down in *Wiard v. Phoenix Ins. Co.*, 251 Ga. 698, 700 (310 SE2d 221) (1983). IIC received no response to this letter from Enfinger. On October 30, 1980, Enfinger was seriously injured in an automobile accident. IIC paid him the $5,000 basic PIP benefits under the policy.

In May 1982, Enfinger, through his wife, requested payment of $45,000 additional PIP benefits from IIC and tendered the required premiums. IIC denied the additional coverage and Enfinger commenced this action seeking the $45,000 additional PIP benefits, penalties and attorney fees based on the insurer's alleged bad faith refusal to pay the claim. The trial court ruled that the insurance policy issued to Enfinger provided for $50,000

PIP benefits from its inception because the IIC application form did not contain the signature spaces for the applicant to accept or reject optional coverage as required by OCGA §33-34-5 (b); that IIC's letter of September 22, 1980, was ineffectual to constitute a rejection of the optional coverage; and that Enfinger was not entitled to penalties and attorney fees because as a matter of law there had been no bad faith refusal to pay the claim. Both parties appealed.

The Court of Appeals reversed the trial court's ruling in a 5-4 decision and held OCGA § 33-34-5 (c) could be used to cure noncompliance with the signature requirements of OCGA §33-34-5 (b), therefore, Enfinger's failure to respond to IIC's letter of September 22, 1980, effectuated a rejection of any optional PIP coverage. We disagree.

A cardinal rule of statutory construction is that courts must look to the purpose and intent of the legislature and construe statutes so as to implement that intent. *Wilson v. Board of Regents,* 246 Ga. 649, 650 (272 SE2d 496) (1980). Therefore, we examine a portion of the history of our "no-fault" law and the decisions interpreting it to determine whether the legislature intended OCGA §33-34-5 (c) to apply to policies issued after the effective date of the statute. The original no-fault Act, Ga. Laws 1974, p. 113, required insurers to utilize forms for application for insurance which contained separate spaces for the insured to indicate acceptance or rejection of each of the optional coverages provided for in the Act. OCGA §33-34-5 (b). One of the required optional coverages was up to $50,000 personal injury protection. IN *Flewellen v. Atlanta Cas. Co.,* 250 Ga. 709 (300 SE2d 673) (1983), we held that a policy of insurance *issued after the effective date of the statute* provides for $50,000 PIP benefits, absent a signed rejection of the optional coverages by the insured. (Emphasis supplied.) See also, *GEICO v. Mooney,* 250 Ga. 760 (300 SE2d 799) (1983). However, the original Act failed to take into account policies which would be in existence on the effective date, March 1, 1975, since no application would be

submitted on these existing policies.[1] To alleviate this oversight, in 1975 the legislature amended the statute by adding OCGA §33-34-5 (c) which provides in pertinent part "On and after the effective date of this Act, all named insureds in existing motor vehicle liability policies who have not previously responded[2] to an offer to accept or reject the optional coverages required to be offered by this Act shall be given an opportunity to accept or reject, in writing, the optional coverages required to be offered under this Section..." We hold this section was intended to apply to policies in existence on March 1, 1975 and not those which came into existence after that date. This court recognized this was the intent of the 1975 amendment in *Wiard v. Phoenix Ins. Co.*, supra. IN *Stafford v. Allstate Ins. Co.*, 252 Ga. 38 (3) (310 SE2d 917) (1984), this court explained that "OCGA §33-34-5 (c) applies to policies in existence on March 1, 1975. OCGA § 33-34-5 (b) applies to applications for policies beginning March 1, 1975. Each category of policies is governed by the respective requirements of the statute."

The majority opinion in the Court of Appeals construed OCGA §33-34-5 (c) so as to apply to Enfinger since he had an "existing motor vehicle liability" policy "after March 1, 1975" and had "not previously responded to an offer to accept or reject the optional coverages required to be offered." While we agree the words of this section are susceptible to such a construction, we believe the legislature did not intend the section be given such a broad application. To hold otherwise would circumvent the signature requirements of OCGA §33-34-5 (b) and this court's decision in *Flewellen v. Atlanta Cas. Co.*, supra. We, therefore, reverse and remand for further disposition not inconsistent herewith.

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[1] In response to this circumstance, the insurance commissioner issued Rules and Regulations of Georgia Insurance Department, Chapter 120-2-28, pp. 351-354, which required a mailing to existing named insureds giving notice that $50,000 PIP coverage would be provided unless rejected.

[2] The legislature took into account that some insureds would have previously responded to the letter mailed out pursuant to the commissioner's regulation.

Judgement reversed and remanded. All the Justices concur, except Marshall, P.J., who concurs in the judgement only.

DECIDED JUNE 29, 1984 – REHEARING DENIED JULY 25, 1984.

Certiorari to the Court of Appeals of Georgia – 170 Ga. App. 443.

Kirbo & Conger, Ben Kirbo, for appellant.

Gurley & Fowler, Michael L. Wetzel, for appellee.

Robert M. Darroch, Richard T. Gieryn, Jr., amici curiae.

EXHIBIT 6

41049. ODOM v. INTERNATIONAL INDEMNITY COMPANY.

CLARKE, Justice.

This case is here on certiorari and involves use of OCGA § 33-34-5 (c) by insurers to correct any defects in automobile insurance applications for policies issued after March 1, 1975.

Odom's policy was issued in August of 1977 and provided for $5,000 personal injury protection. The trial court granted summary judgement for Odom on the issue of his entitlement to an additional $45,000 coverage because the policy application form did not comply with OCGA §33-34-5(b). See *Flewellen v. Atlanta Cas. Co.,* 250 Ga. 709 (300 SE2d 673) (1983). The Court of Appeals reversed based upon their opinion in *Enfinger v. Intl. Indem. Co.,* 170 Ga. App. 443 (–SE2d–) (1984), holding that a proper statutory reduction of benefits was made when Odom failed to respond to a letter mailed by the insurer on January 18, 1978, which complied with OCGA §33-34-5 (c). *Intl. Indem. Co. v. Odom,* 170 Ga. App. 447 (–SE2d–) (1984).

We granted certiorari and reversed the holding of the Court of Appeals in *Enfinger v. Intl. Indem. Co.,* 253 Ga. 185 (–SE2d–) (1984). Consequently, the judgement of the Court of Appeals in this case must be reversed and remanded for further proceedings consistent with the opinion of this court in *Enfinger,* supra.

Judgement reversed and remanded. All the Justices concur, except Marshall, P.J., who concurs in the judgement only.

DECIDED JULY 6, 1984–REHEARING DENIED JULY 30, 1984.

Certiorari to the Court of Appeals of Georgia–170 Ga. App. 447.

Tate, Mallernee & Wildau, Robert P. Wildau, for appellant.

Gurley & Fowler, Michael L. Wetzel, for appellee.

Robert M. Darroch, Richard T. Gieryn, Jr., amicus curiae.